

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |                           |   |                                    |                                 |
|--|---|---------------------------|---|------------------------------------|---------------------------------|
| Investigator:<br>Perri Fagin                     | Team:<br>Squad #10                            | CCRB Case #:<br>201704878 | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |   |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Friday, 06/09/2017 10:25 PM  | Location of Incident:<br>Inside of § 87(2)(b) | Precinct:<br>23           | 18 Mo. SOL<br>12/9/2018                               | EO SOL<br>12/9/2018                |                                 |
| Date/Time CV Reported<br>Sat, 06/10/2017 3:15 AM | CV Reported At:<br>IAB                        | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Thu, 06/15/2017 2:33 PM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. POM Michael Laborde   | 05867  | 954037 | 023 PCT |
| 2. POM Jonathan Perez    | 17154  | 951041 | 023 PCT |
| 3. POM Gregory King      | 26847  | 942010 | 023 PCT |
| 4. POM Justin Esposito   | 21264  | 959618 | 023 PCT |
| 5. POM Nicholas Henry    | 07642  | 941891 | 023 PCT |
| 6. POM Robert Cox        | 26280  | 948821 | 023 PCT |
| 7. SGT Eliezer Caraballo | 03885  | 917379 | 023 PCT |
| 8. An officer            |        |        | 023 PCT |
| 9. SGT Jonathan Hom      | 4803   | 940269 | 023 PCT |
| 10. Officers             |        |        | 023 PCT |

| Officer(s)              | Allegation  | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| A. Officers             | Force: Officers used physical force against § 87(2)(b)                              |                             |
| B.POM Robert Cox        | Force: Police Officer Robert Cox used physical force against § 87(2)(b)             |                             |
| C.POM Michael Laborde   | Force: Police Officer Michael Laborde used physical force against § 87(2)(b)        |                             |
| D.SGT Eliezer Caraballo | Abuse: Sergeant Eliezer Caraballo entered § 87(2)(b) in Manhattan.                  |                             |
| E.POM Justin Esposito   | Abuse: Police Officer Justin Esposito entered § 87(2)(b) in Manhattan.              |                             |
| F.POM Nicholas Henry    | Abuse: Police Officer Nicholas Henry entered § 87(2)(b) in Manhattan.               |                             |
| G.POM Gregory King      | Abuse: Police Officer Gregory King entered § 87(2)(b) in Manhattan.                 |                             |
| H.POM Jonathan Perez    | Abuse: Police Officer Jonathan Perez entered § 87(2)(b) in Manhattan.               |                             |
| I.POM Jonathan Perez    | Force: Police Officer Jonathan Perez pointed his gun at § 87(2)(b) and individuals. |                             |

| Officer(s)            | Allegation   | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| J.POM Justin Esposito | Force: Police Officer Justin Esposito pointed his gun at individuals.                    |                             |
| K.POM Justin Esposito | Abuse: Police Officer Justin Esposito searched individuals.                              |                             |
| L.POM Nicholas Henry  | Abuse: Police Officer Nicholas Henry searched individuals.                               |                             |
| M.POM Jonathan Perez  | Abuse: Police Officer Jonathan Perez searched § 87(2)(b) in Manhattan.                   |                             |
| N. An officer         | Abuse: An officer searched an individual.  |                             |
| O.SGT Jonathan Hom    | Abuse: Sergeant Jonathan Hom authorized the entry and search of § 87(2)(b) in Manhattan. |                             |
| § 87(4-b), § 87(2)(g) |  |                             |

### Case Summary

On June 10, 2017, Captain James Dennedy called Internal Affairs Bureau (IAB) to file this complaint on behalf of § 87(2)(b) generating log #2017-21987. This complaint was received at the CCRB on June 10, 2017.

On June 9, 2017, at approximately 10:25 p.m., a report of a dispute with a firearm went over the radio. Police Officer Robert Cox, Police Officer Michael Laborde, Police Officer Jonathan Perez, Police Officer Justin Esposito, Police Officer Nicholas Henry, Police Officer Gregory King, Sergeant Jonathan Hom, and Sergeant Eliezer Caraballo, all assigned to the 23<sup>rd</sup> Precinct, responded to the location, § 87(2)(b) in Manhattan. Officers spoke with the 911 caller, § 87(2)(b) who lived in apartment § 87(2)(b). She reported that § 87(2)(b) who lived on the same floor in apartment § 87(2)(b) hit her child and had a firearm. Based on the collected testimonies, § 87(2)(b) was not present for the below-mentioned allegations.

Officers went to § 87(2)(b)'s apartment door and his mother, § 87(2)(b) answered. § 87(2)(b) eventually stepped outside and, after a struggle with PO Laborde and PO Cox, was handcuffed and placed under arrest. During this struggle, § 87(2)(b) was allegedly tackled and his head was stepped on (**Allegation A: Force**, § 87(2)(g)). While § 87(2)(b) was being escorted downstairs inside the elevator, PO Cox and PO Laborde allegedly used physical force against him, including PO Laborde kneeing him in his sides (**Allegation B: Force**, § 87(2)(g)) (**Allegation C: Force**, § 87(2)(g)). § 87(2)(b) was ultimately arrested for § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Sgt. Caraballo, PO Esposito, PO Perez, and PO Henry, PO King all entered the apartment (**Allegation D: Abuse of Authority**, § 87(2)(g)) (**Allegation E: Abuse of Authority**, § 87(2)(g)) (**Allegation F: Abuse of Authority**, § 87(2)(g)) (**Allegation G: Abuse of Authority**, § 87(2)(g)) (**Allegation H: Abuse of Authority, exonerated**). § 87(2)(b)'s friends, unidentified by the investigation, were in a bedroom, and PO Esposito and PO Perez pointed their guns at them, and PO Perez allegedly pointed his firearm at § 87(2)(b) (**Allegation I: Force**, § 87(2)(g)) (**Allegation J: Force**, § 87(2)(g)). PO Esposito and PO Henry searched § 87(2)(b)'s friends, and then they left the apartment (**Allegation K: Abuse of Authority**, § 87(2)(g)) (**Allegation L: Abuse of Authority**, § 87(2)(g)). PO Perez searched § 87(2)(b)'s bedroom (**Allegation M: Abuse of Authority**, § 87(2)(g)) before all officers exited the apartment.

§ 87(2)(b)'s girlfriend, § 87(2)(b) arrived on scene and her purse was allegedly searched by an officer (**Allegation N: Abuse of Authority**, § 87(2)(g)). Sgt. Hom, who had transported § 87(2)(b) to the stationhouse, returned to the scene with a Consent to Search form. § 87(2)(b) signed the form and officers entered and searched her apartment (**Allegation O: Abuse of Authority**, § 87(2)(g)). After solely recovering marijuana, the officers left.

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

Surveillance footage from the apartment building was obtained, which solely captured the elevator and the lobby.

### **Findings and Recommendations**

#### **Allegation (A) Force: Officers used physical force against § 87(2)(b)**

During his phone statement, § 87(2)(b) stated that he was involved in a verbal dispute with a woman inside the elevator when her son had pressed all the buttons. § 87(2)(b) returned to his apartment, and officers later arrived outside his apartment regarding this dispute. § 87(2)(b) exited the apartment and, in the hallway, officers, whom he was unable to describe, tackled him to the ground before either PO Laborde or PO Cox stepped on his face. § 87(2)(b) was not cooperative with the investigation as he missed one interview which was to take place at a library near his home, and was unresponsive to contact attempts (Board Review 01) (Board Review 25).

During her in-person statement, § 87(2)(b) testified that the officers were present at the apartment due to § 87(2)(b)'s prior dispute. After § 87(2)(b) opened the door, she described § 87(2)(b) as “grabbed” and “pushed” before he was handcuffed; however, she also was unable to describe the specific force used against him as she was not paying attention to the physical interaction between § 87(2)(b) and officers (Board Review 02).

PO King and PO Henry did not observe any physical force used against § 87(2)(b) and both denied observing § 87(2)(b) on the ground. PO Esposito denied observing any physical interaction between officers and § 87(2)(b). PO Perez denied seeing § 87(2)(b) on the ground, and denied the occurrence of the alleged force. Sgt. Caraballo denied observing the alleged force, and testified that the only force he witnessed was officers pulling § 87(2)(b)'s arms behind his back to handcuff him. At the time of the alleged physical force, Sgt. Hom was not present in the hallway (Board Review 03) (Board Review 04) (Board Review 05) (Board Review 06) (Board Review 07) (Board Review 08).

PO Cox and PO Laborde both testified that § 87(2)(b) resisted being placed into handcuffs, but both denied that the alleged force was used against him. PO Cox testified the only physical contact he made with § 87(2)(b) was holding his arm. PO Laborde testified that the only contact he made with § 87(2)(b) was grabbing his wrist and arm. PO Cox and PO Laborde denied tackling § 87(2)(b) as well as stepping on his face. PO Cox denied seeing § 87(2)(b) on the ground, and denied observing or using the alleged physical force. PO Laborde did not remember seeing him on the floor, and did not recall whether the alleged force occurred (Board Review 09) (Board Review 10).

§ 87(2)(g) all documentation he prepared regarding this incident did not document that he tackled § 87(2)(b) or stepped on his face. PO Laborde completed a TRI report, AIDED report, and a LOD report regarding this incident. PO Laborde reported that the only force he used against § 87(2)(b) was restraining him against a wall, and that due to § 87(2)(b) flailing his arms while PO Laborde attempted to handcuff him, PO Laborde sustained a laceration to his hand requiring sutures (Board Review 11) (Board Review 12) (Board Review 13).

§ 87(2)(g)

**Allegation (B) Force: Police Officer Robert Cox used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Michael Laborde used physical force against § 87(2)(b)**

During his phone statement, § 87(2)(b) alleged that he was “beat up” by PO Laborde and PO Cox while inside the elevator, which he described as being kned in his sides by PO Laborde.

PO Cox and PO Laborde, the two officers inside the elevator with § 87(2)(b) denied that any officer kned § 87(2)(b) inside the elevator.



§ 87(2) .mp4

Video Footage obtained from § 87(2)(b), the building’s management company, captured the entirety of the elevator ride of § 87(2)(b) PO Laborde, and PO Cox. Neither officer appears to use any physical force against § 87(2)(b) inside the elevator. Specifically, PO Laborde cannot be seen kneeling § 87(2)(b) (Board Review 17).

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Sergeant Eliezer Caraballo entered § 87(2)(b) in Manhattan.**

**Allegation (E) Abuse of Authority: Police Officer Justin Esposito entered § 87(2)(b) in Manhattan.**

**Allegation (F) Abuse of Authority: Police Officer Nicholas Henry entered § 87(2)(b) in Manhattan.**

**Allegation (G) Abuse of Authority: Police Officer Gregory King entered § 87(2)(b) in Manhattan.**

**Allegation (H) Abuse of Authority: Police Officer Jonathan Perez entered § 87(2)(b) in Manhattan.**

**Allegation (I) Force: Police Officer Jonathan Perez pointed his gun at § 87(2)(b) and individuals.**

**Allegation (J) Force: Police Officer Justin Esposito pointed his gun at individuals.**

**Allegation (K) Abuse of Authority: Police Officer Justin Esposito searched individuals.**

**Allegation (L) Abuse of Authority: Police Officer Nicholas Henry searched individuals.**

An attorney was consulted regarding these allegations.

It is undisputed that, prior to the officers' arrival on the scene, § 87(2)(b) had a dispute with one of his neighbors, who was staying in apartment § 87(2)(b). It is also not disputed that officers arrived on the scene pursuant to a 911 call in which the caller reported a dispute with a firearm. After officers arrived at the location, it is undisputed that they spoke with the 911 caller before knocking on § 87(2)(b)'s and § 87(2)(b)'s door. It is further undisputed that § 87(2)(b) stepped outside and was placed under arrest before officers entered the apartment. It is also undisputed that there were several other civilians present inside the apartment.

§ 87(2)(b) testified that when officers knocked on her door, she opened it, and they asked to speak with § 87(2)(b). She retrieved § 87(2)(b) and § 87(2)(b) was ordered into the hallway. § 87(2)(b) complied but § 87(2)(b) was unable to definitively describe what happened with § 87(2)(b) and officers, as she was focused on the officers at her front door. Approximately four officers ran into the apartment, at least one with his gun drawn, and he pointed it at § 87(2)(b) before he went to § 87(2)(b)'s room. Approximately four of § 87(2)(b)'s friends were in his room, and the officer pointed his gun at them. Each was ordered out of the room and their pockets and backpacks were searched. After the search, all of these individuals were permitted to leave.

During his phone statement, § 87(2)(b) stated that officers told § 87(2)(b) they had a warrant for the apartment, and she told them they could not enter. However, he later learned that his mother ultimately allowed them to enter, but never actually observed this occur, nor did he know why he believed she let them in.

Preceding § 87(2)(b)'s and § 87(2)(b)'s interaction with officers, occupants of apartment § 87(2)(b) called 911 twice. In the first call, a female caller reported that § 87(2)(b) was outside her door, telling her to come outside, and was "acting like" he had a gun in his bag. The second 911 call was made by a different female, who reported that § 87(2)(b) had come to her door with a gun pursuant to an altercation between her and him. She stated he was with a group of friends, and she did not know whether they were armed. During both 911 calls, physical descriptions of § 87(2)(b) were provided to the 911 operator. Initially, a job for a potential firearm was put over the radio. However, the job was later put over as a dispute with a firearm, and that the caller reported that the perpetrator had pulled out a gun (Board Review 15) (Board Review 16) (Board Review 17).

According to officer testimonies, Sgt. Hom, Sgt. Caraballo, PO Cox, PO Laborde, PO Perez, PO Esposito arrived first and PO King and PO Henry arrived later. PO Cox, PO Laborde, PO Perez, PO Esposito, and Sgt. Caraballo responded to the 911 caller's apartment, while Sgt. Hom, who was not present for these allegations, remained downstairs until § 87(2)(b) was escorted out of the building. At her apartment, the caller reported that she had a dispute with § 87(2)(b) resulting in § 87(2)(b) presenting her with a firearm. The caller then told the officers which apartment § 87(2)(b) lived in, and the present officers approached his door. § 87(2)(b) answered the door, and § 87(2)(b) eventually stepped outside, into the hallway.

Sgt. Caraballo testified that once § 87(2)(b) stepped into the hallway, PO Perez and PO Laborde questioned him about the firearm. Sgt. Caraballo did not recall whether § 87(2)(b) denied or acknowledged having the firearm. § 87(2)(b) ran back into the apartment and PO King and PO

Henry ran after her with their firearms drawn, but Sgt. Caraballo did not know where they were pointed. They told Sgt. Caraballo that there were additional individuals inside. Sgt. Caraballo entered the apartment for safety concerns regarding the individuals inside the apartment, given that § 87(2)(b) allegedly brandished a firearm, § 87(2)(b) ran back into the apartment, and there were additional people inside the apartment that the officers did not previously know about. Sgt. Caraballo stood at the threshold of the front door while, one by one, the individuals were ordered into the hallway and frisked for weapons. Sgt. Caraballo denied observing officers point their weapons at these individuals. Sgt. Caraballo observed an officer (he was not sure who) open and search each individual's backpacks. After the individuals were cleared out of the bedroom, PO Perez entered the bedroom, but Sgt. Caraballo did not know what he did. Aside from PO Perez in this bedroom, Sgt. Caraballo did not know whether officers went elsewhere in the apartment. After PO Perez exited the bedroom, Sgt. Caraballo ordered all the officers out of the apartment. After they exited, PO Perez told Sgt. Caraballo that § 87(2)(b) had provided consent for officers to search his bedroom, but Sgt. Caraballo did not know additional context of this statement. Sgt. Caraballo saw Sgt. Hom outside the building and explained that PO Perez had an arrest, then left.

PO Perez testified that after § 87(2)(b) exited his apartment, he assisted PO Laborde in placing him into handcuffs. During this process, § 87(2)(b) yelled, "Go ahead, I have a gun. Go in my apartment." § 87(2)(b) turned around and ran back into her apartment, followed by two uniformed officers. PO Perez then entered the apartment because he feared that § 87(2)(b) was running in to retrieve the gun. PO Perez walked down the hallway and, in a rear bedroom, he observed four to six males. He unholstered his firearm and pointed it at all of them, as he feared there was a gun in the apartment. One by one, PO Perez ordered each of the males to step out of the bedroom into the hallway, maintaining his firearm pointed at them. The males were frisked and, once they were all out of the bedroom, PO Perez holstered his firearm. PO Perez did not recall whether the males had bags with them.

PO Esposito testified that, once § 87(2)(b) exited the apartment into the hallway, the 911 caller informed an officer, who in turn nodded, which to PO Esposito confirmed that § 87(2)(b) was the suspect. Officers began to handcuff § 87(2)(b) and one of them asked him whether he had a firearm. § 87(2)(b) stated that he had a gun inside his bedroom, and that officers could check. § 87(2)(b) then turned around and ran into the apartment, and PO Esposito suspected that she was going to retrieve a gun. PO Esposito ordered her to exit the apartment multiple times, but she remained inside. PO Esposito and Sgt. Caraballo entered the apartment as § 87(2)(b) admitted to having a firearm and § 87(2)(b) ran back into the apartment. As PO Esposito entered, he unholstered his firearm and pointed it toward the ground. Although § 87(2)(b) told the officers that there was no one else inside the apartment, PO Esposito observed six males inside a bedroom. One by one, Sgt. Caraballo ordered each male into the hallway, and PO Esposito holstered his firearm. PO Esposito denied pointing his gun at these individuals or § 87(2)(b). Once they were in the hallway, PO Esposito frisked each of them for weapons, and then they were each permitted to leave. PO Esposito denied searching anywhere in the apartment, or observing any officer do so. After the males left the apartment, PO Esposito exited back into the hallway.

PO Henry testified that when he arrived, § 87(2)(b)s and § 87(2)(b) apartment door was open, § 87(2)(b) stood in the doorway, and § 87(2)(b) was in the hallway. § 87(2)(b) stated,

“There’s no gun, you can look,” and § 87(2)(b) stated, “You can go in my room, you can go in my room.” § 87(2)(b) disappeared into the apartment. PO Henry entered the apartment. PO Henry saw six to eight males in a back bedroom, and they were ordered out of the bedroom into the hallway. PO Henry frisked one of the males. PO Henry denied entering any of these males’ bags or observing any officer do so. PO Henry did not recall whether he entered or searched any other rooms before exiting the apartment. PO Henry denied ever unholstering his firearm or observing any officer do so.

PO King testified that when he arrived on scene, § 87(2)(b) stated, “You can go check my room,” but did not recall the conversation surrounding that statement. A few seconds later, § 87(2)(b) ran into the apartment. Officers told her not to run back inside, but she continued to return inside the apartment. PO King entered the apartment along with other officers. PO King entered after seeing other officers run in, paired with the knowledge of a gun inside the apartment, and that § 87(2)(b) ran back into the apartment once § 87(2)(b) acknowledged there was a gun inside. After PO King entered the apartment, he observed approximately eight males inside a rear bedroom and drew his firearm, pointing it into the room of males, but not at any particular individual. PO Perez, who also had his firearm drawn and pointed into the bedroom, ordered the males out, one by one, and PO King holstered his firearm once the last individual was out of the bedroom. PO King denied observing any of the males frisked or searched, including any bags they may have possessed. PO King denied searching inside anything.

PO Cox and PO Laborde testified that § 87(2)(b) acknowledged the incident in the elevator, but PO Cox did not recall whether § 87(2)(b) said anything about the alleged firearm, and PO Laborde testified that § 87(2)(b) acknowledged returning to the caller’s apartment with a gun. Neither PO Cox nor PO Laborde observed officers enter § 87(2)(b)’s apartment, and once he was in handcuffs, PO Cox and PO Laborde escorted § 87(2)(b) downstairs.

§ 87(2)(b)’s friends who were undisputedly inside the apartment, and whom officers acknowledged frisking or searching, remain unidentified by the investigation. § 87(2)(b) only knew one of them as “§ 87(2)(b)” and another as “§ 87(2)(b)” but did not have further identifying information or their contact information. § 87(2)(b) stated that § 87(2)(b) would have their information; however, as previously discussed, § 87(2)(b) was uncooperative with the investigation. Additionally, Stop, Question, and Frisk reports were not completed for these individuals (Board Review 26).

Officers may enter a premise without a warrant, provided there is probable cause and exigent circumstances, or if voluntary consent is given. The following factors are weighed to determine whether exigent circumstances exist: the gravity or violent nature of the offense with which the suspect is to be charged; whether the suspect is reasonably believed to be armed; a clear showing of probable cause to believe that the suspect committed the crime; strong reason to believe that the suspect is in the premises being entered; a likelihood that the suspect will escape if not swiftly apprehended; the peaceful circumstances of the entry. The factors listed here are not exhaustive, and the ultimate factor that determines exigency is whether there was an urgent need to enter a location without a warrant. People v. McBride, 14 N.Y.3d 440,446 (2010) (Board Review 31). Exigent circumstances may also be present if officers reasonably believe that there is a significant risk that a residence’s occupants may destroy evidence. People v. Mojica-Sanchez, 90 A.D.3d



499 (Board Review 32). To justifiably point his gun, an officer must possess an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide, Procedure 221-01 (Board Review 33). A frisk is permissible only if police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous. People v. Russ, 61 N.Y.2d 693, 695 (Board Review 29). In order to search someone, an officer must have probable cause to believe the person is either armed or committing a crime. People v. DeBour, 40 N.Y. 2d 210 (1973) (Board Review 28).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (M) Abuse of Authority: Police Officer Jonathan Perez searched § 87(2)(b) in Manhattan.**

An attorney was consulted regarding this allegation.

§ 87(2)(b) testified that after the individuals were searched and permitted to leave the apartment, two officers then searched § 87(2)(b)'s bedroom by lifting up his mattress and looking underneath it, lifting up his computer, opened his closet, opened two duffel bags, and opened each drawer in a five-drawer dresser before exiting the apartment.

Based on officer testimony, the investigation identified PO Perez as the sole officer who searched § 87(2)(b)'s bedroom after the individuals were permitted to leave.

PO Perez testified that when the males exited the bedroom, he entered to see if there were weapons or contraband in the immediate vicinity of where each person was sitting. PO Perez looked into the already open closet, underneath the bed, and in the drawers of a dresser. PO Perez observed open backpacks on the floor. He looked inside them, but did not enter them. PO Perez did not search anywhere else, nor did he observe other officers do so. PO Perez exited the apartment.

A protective sweep is a quick and limited search of premises, conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. People v. Harris, 141 A.D.3d 1024 (Board Review 30).

§ 87(2)(g)

**Allegation (N) Abuse of Authority: An officer searched an individual.**

§ 87(2)(b) testified that § 87(2)(b)'s girlfriend, § 87(2)(b) arrived at the apartment sometime between the first and second searches. When she arrived, an unidentified officer allegedly entered her purse before allowing her into the apartment.

PO Henry and PO Perez remembered an additional female civilian on the scene, but did not know who she was. Neither officer remembered her bag being searched. PO Cox testified that § 87(2)(b)'s girlfriend arrived on the scene, but did not recall whether any officers searched her bag. Sgt. Caraballo and PO Esposito testified that § 87(2)(b)'s girlfriend arrived on the scene, but both denied that her bag was searched by any officer. Sgt. Hom testified that he did not observe any civilian, aside from § 87(2)(b) and § 87(2)(b) on the scene. Neither PO King nor PO Laborde were present at the time of this allegation.

§ 87(2)(g)

**Allegation (O) Abuse of Authority: Sergeant Jonathan Hom authorized the entry and search of § 87(2)(b) in Manhattan.**

Given that Sgt. Hom got § 87(2)(b) to sign a Consent to Search form, and he authorized the search, § 87(2)(b) is pleaded solely against him.

§ 87(2)(b) testified that, after the first entry into her apartment, Sgt. Hom advised § 87(2)(b) multiple times that she should provide consent to search her apartment, as they might need to wait until the morning to obtain a search warrant. Initially, § 87(2)(b) refused. However, after

approximately an hour of officers waiting outside her apartment, § 87(2)(b) voluntarily signed a Consent to Search form, presented to her by Sgt. Hom.

Sgt. Hom corroborated § 87(2)(b) testimony that she did not initially want to sign the Consent to Search form. Sgt. Hom testified that he informed her that if she did not sign the form, an officer would sit outside her apartment until a warrant was obtained. Sgt. Hom described this as procedure when waiting for a search warrant. Sgt. Hom described § 87(2)(b) as providing consent willingly by signing the Consent to Search form.

§ 87(2)(b) signed a Consent to Search form, granting officers permission to search the two bedrooms, living room, bathroom, and closets of her apartment (Board Review 18).

According to People v. Cosme, 48 NY2d 286 (1979), the police may lawfully conduct a warrantless entry and search when they have obtained the voluntary consent of a party who possess the requisite degree of authority and control over the premises or personal property in question (Board Review 24).

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is both § 87(2)(b) s and § 87(2)(b) first CCRB complaint (Board Review 19).
- Sgt. Caraballo has been a member-of-service for 21 years and has five previous CCRB complaints filed against him involving five allegations, none of which were substantiated. In case 200302321, an entry and search allegation was pleaded against Sgt. Caraballo which the Board closed as “victim uncooperative.”

- PO Perez has been a member-of-service for six years and has two previous CCRB complaints filed against him. Since this complaint, one additional complaint involving three allegations has been filed against PO Perez. In CCRB case 201509267, the Board exonerated a gun pointed allegation and substantiated a property damage allegation against PO Perez. The Board recommended formalized training and the NYPD's disposition was "instructions."
- PO Esposito has been a member-of-service for two years and this is the first CCRB complaint filed against him.
- PO Henry has been a member-of-service for 11 years and has three prior CCRB complaints filed against him involving seven allegations, none of which were substantiated § 87(2)(g)
- PO Cox has been a member-of-service for seven years and has one prior CCRB complaint filed against him involving three allegations. Since this complaint, PO Cox has had one additional CCRB complaint filed against him involving two allegations. In CCRB case 201505431, the Board substantiated one frisk allegation, one search allegation, and one stop allegation against PO Cox. The Board recommended command discipline B; however, the NYPD issued PO Cox formalized training.
- PO Laborde has been a member-of-service for four years and has four prior CCRB complaints filed against him involving 14 allegations, none of which were substantiated. Since this complaint, one additional complaint involving 10 allegations has been filed against PO Laborde. In case 201602797, two physical force allegations were pleaded against PO Laborde, which the Board closed as "complainant uncooperative." In case 201704633, one physical force allegation was pleaded against PO Laborde; however, the Board has yet to reach a disposition.
- Sgt. Hom has been a member-of-service for 11 years and has eight prior CCRB complaints filed against him involving 17 allegations, none of which were substantiated § 87(2)(g). Since this complaint, one additional CCRB complaint has been filed against Sgt. Hom involving three allegations.
- PO King has been a member-of-service for 11 years and has one prior complaint filed against him involving two allegations, neither of which were substantiated § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation § 87(2)(g) (Board Review 20).
- § 87(2)(b)
- § 87(2)(b)
- As of December 26, 2017, a Notice of Claim was not filed with the New York City Comptroller's Office regarding this incident (Board Review 23).

Squad No.: 10

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Investigator: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Squad Leader: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|           |           |                    |       |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____     | _____              | _____ |
|           | Signature | Print Title & Name | Date  |